

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 1:11-cr-00010-MR-DLH**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES W. "BILL" BAILEY, JR.,

Defendant.

IN RE: EAJA PETITIONS

**MEMORANDUM OF
DECISION AND ORDER**

THIS MATTER is before the Court on the Petitioners' supplemental filings regarding the calculation of fees and costs awarded to them pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) ("EAJA") [Docs. 758-774].

The Court previously made extensive findings and conclusions, which are incorporated by reference herein, regarding the Government's responsibility to the Petitioners for attorneys' fees and costs pursuant to the EAJA and ordered the Petitioners to submit further information regarding the hours worked by the Petitioners' respective attorneys. [Doc. 745]. The Court

has now received such supplemental filings from the Petitioners. Upon careful review of these supplemental filings, the Court finds that the amounts set forth below in the mandate of this Order represents the correct calculation of the hours, hourly rates, and costs previously found to be reasonable and necessarily incurred as a result of this litigation.

IT IS, THEREFORE, ORDERED that the Court hereby awards the following sums to the Petitioners, which sums are in full satisfaction of any and all claims by the Petitioners in this case pursuant to 28 U.S.C. § 2412(d):

- (1) Petitioner William Stephen Aldridge III is hereby awarded fees and costs in the amount of \$18,464.26;
- (2) Petitioners James W. Carter, Marilyn F. Carter, William Ellis Peacock, and Penny Peacock are hereby jointly and severally awarded fees and costs in the amount of \$9,073.88¹;

¹ Attorney James Kilbourne represented a number of petitioners in this litigation and has submitted twelve separate supplemental filings setting forth revised calculations of fees based on the Court's prior Order. Many of the calculations made in Mr. Kilbourne's filings, however, are simply incorrect. For example, with respect to the Carters and Peacocks' request for fees, counsel seeks recovery of 1.24 hours of work performed by a paralegal, which was allowed by the Court at the rate of \$100.00 per hour. The requested amount of fees for the 1.24 hours of worked claimed, however, is \$124.21, a difference of twenty-one cents. Counsel also appears to undercharge, such as when he seeks recovery of \$818.79 for 4.38 hours of work performed in 2013, for which the Court allowed a rate of \$187.02 per hour (which would result in a fee of \$819.15). With respect to the William Ellis Peacock LLC, counsel's miscalculations result in counsel seeking fees of \$10,263.96 when in fact counsel is entitled to only \$10,261.25. While these mathematical errors are relatively minor, such errors quickly add up here, where counsel is representing the majority of the Petitioners seeking fees. Having reviewed all of Mr. Kilbourne's

- (3) William Ellis Peacock, the William Ellis Peacock Retirement Account, and the William Ellis Peacock IRA, LLC are hereby jointly and severally awarded fees and costs in the amount of \$10,260.96;
- (4) Petitioners James F. Combest, the James F. Combest Self Directed IRA, LLC, and the James F. Combest Individual Retirement Account are hereby jointly and severally awarded fees and costs in the amount of \$14,282.39;
- (5) Petitioners Peter L. Contrastano, the Peter L. Contrastano Individual Retirement Account, and the Peter L. Contrastano Real Estate IRA, LLC are hereby jointly and severally awarded fees and costs in the amount of \$18,980.12;
- (6) Petitioners Beverly J. Daggett, Beverly J. Daggett Individual Retirement Account, the Beverly J. Daggett Real Estate IRA, LLC, Russell L. Daggett, the Russell L. Daggett Individual Retirement Account, and the Russell L. Daggett Real Estate IRA,

supplemental filings, it appears to the Court that counsel's miscalculations result in approximately an overcharge of approximately three dollars in each petition. Accordingly, the Court will reduce each of the awards made to Petitioners represented by Mr. Kilbourne by a total amount of three dollars.

LLC are hereby jointly and severally awarded fees and costs in the amount of \$18,568.41;

- (7) Petitioners James R. Eddy Real Estate IRA, LLC, James R. Eddy Real Estate IRA, and James R. Eddy, individually and in his capacity as owner of the James R. Eddy Real Estate IRA, LLC, are hereby jointly and severally awarded fees and costs in the amount of \$7,989.96;
- (8) Petitioners Jeffrey E. Efird and Melissa P. Efird are hereby jointly and severally awarded fees and costs in the amount of \$37,862.39;
- (9) Petitioner James R. Fatland is hereby awarded fees and costs in the amount of \$4,906.26;
- (10) Petitioners William R. Ghormley, the William R. Ghormley Individual Retirement Account, and the William R. Ghormley Real Estate Individual Retirement Account are hereby jointly and severally awarded fees and costs in the amount of \$14,725.26;
- (11) Petitioners Victor D. Howard, Victor D. Howard Individual Retirement Account, and the Victor D. Howard Real Estate IRA, LLC are hereby jointly and severally awarded fees and costs in the amount of \$15,952.91;

- (12) Petitioners Joan T. Johnstone, Joan T. Johnstone Individual Retirement Account, and the Joan T. Johnstone Real Estate IRA, LLC are hereby jointly and severally awarded fees and costs in the amount of \$29,318.47;
- (13) Petitioner Harold K. Ledford is hereby awarded fees and costs in the amount of \$12,807.58;
- (14) Petitioners James H. Lucas, Jr., the James H. Lucas, Jr. Individual Retirement Account, and the James H. Lucas, Jr. Real Estate IRA, LLC are hereby jointly and severally awarded fees and costs in the amount of \$18,504.40;
- (15) Petitioners David R. McCartney, the David R. McCartney Individual Retirement Account, and the David R. McCartney Real Estate IRA, LLC are hereby jointly and severally awarded fees and costs in the amount of \$36,112.29²;
- (16) Petitioner Jonathan McElroy, trustee of The Monroe Real Estate Revocable Trust, on behalf of himself as Trustee, the Trust, its settlor, and its beneficiaries, and Petitioners Michael James

² The McCartney Petitioners' supplemental filing contains an error in the amount of fees sought with respect to attorney work performed in 2012. The supplemental filing seeks \$9,603.00 for 51.20 hours calculated at the hourly rate of \$184.32. The correct amount is \$9,437.18.

Mehaffey, the Michael James Mehaffey Individual Retirement Account, and the Michael James Mehaffey Real Estate IRA, LLC are hereby jointly and severally awarded fees and costs in the amount of \$19,453.40;

(17) Petitioners Paul L. Miller and the Paul L. Miller Real Estate IRA, LLC are hereby jointly and severally awarded fees and costs in the amount of \$14,796.70;

(18) Petitioners John C. Myers, the John C. Myers Individual Retirement Account, and the John C. Myers Real Estate IRA, LLC are hereby jointly and severally awarded fees and costs in the amount of \$16,429.79;

(19) Petitioners Becky Pope, Keith Pope, the Keith Pope Individual Retirement Account, and the Keith Pope Real Estate IRA, LLC are hereby jointly and severally awarded fees and costs in the amount of \$20,476.79;

(20) Petitioner Terry Price, individually and as manager of Terry L. Price Real Estate IRA, LLC, is hereby awarded fees and costs in the amount of \$15,804.67;

(21) Petitioners David E. Gable, Brian T. McSharry, Douglas W. Morris, Lorri K. Morris, Brian D. Gardze, Carlton Lee Matthews,

Sidney S. Locke, Stephen M. Todd, Michael J. Mikina, Wendy Hammond, Daniel F. Russian, Bruce H. Keel, Gregory M. McCarthy, Mark A. Brezenski, and Timothy E. Batson are hereby jointly and severally awarded fees and costs in the amount of \$161,634.48;

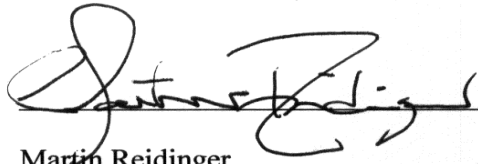
(22) Petitioners Terry R. Sloan, the Terry R. Sloan Individual Retirement Account, and the Terry R. Sloan Real Estate IRA, LLC are hereby jointly and severally awarded fees and costs in the amount of \$37,077.82;

(23) Petitioner Kenneth L. Talley Real Estate IRA, LLC is hereby awarded fees and costs in the amount of \$29,180.63;

(24) Petitioners Robert E. Tuck, the Robert E. Tuck Individual Retirement Account, and the Robert E. Tuck Real Estate IRA, LLC are hereby jointly and severally awarded fees and costs in the amount of \$7,724.26; and

(25) Petitioners Glenn A. Warren, the Glenn A. Warren Individual Retirement Account, and the Glenn A. Warren Real Estate IRA, LLC are hereby jointly and severally awarded fees and costs in the amount of \$15,500.28.

IT IS SO ORDERED.


Martin Reidinger
United States District Judge

